

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT No. 750 of 1987

Rajkumar D. Tainwalla .. Plaintiff
versus
Milton Plastic Industries & ors. .. Defendants

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Mr.G. Misquita i/b E. Lam & Co. for the plaintiff.
Mr.M.K. Ghelani i/b Law Charter & Co. for the
defendant nos.2 and 6.

CORAM : D.G. KARNIK, J
DATED : 16th June 2006.

P.C.:

1. Heard learned counsel for the plaintiff and the defendants.
2. The plaintiff has filed this suit for recovery of a sum of Rs.1,52,767/- together with interest on the

principal sum of Rs.1,00,000/-. In para-1 of the plaint, the plaintiff has averred that the defendant no.1 is a partnership firm and defendant nos.2 to 6 are its partners. In para-2, it is averred that the plaintiff lent and advanced to the defendant no.1 Rs.1,00,000/- by a cheque drawn in its favour. It is then averred that the money has not been repaid. The plaintiff demanded the money but the defendants failed and neglected to make the payment. Hence, this suit is filed for recovery of the money.

3. The defendant no.1 has not filed appearance. Though the defendant nos.2 to 6 have appeared through an advocate they have not filed any written statement. In the circumstances, the averments made in the plaint are deemed to be admitted.

4. Learned counsel for the defendant nos.2 to 6 submitted that defendant nos.2 to 6 are not the partners of the defendant no.1 firm. This is the question of fact which was required to be pleaded by filing written statement. Not having done so, they cannot orally contend that they are not the partners of defendant no.1, at this stage. The plaintiff has annexed to the plaint a copy of the notice dated 31st

January 1987 sent to all the defendants. The defendants have not denied the receipt of the notice. Despite of the notice, the defendants 2 to 6 have not sent any reply denying that they are not the partners of defendant no.1. Hence, the oral submission of their counsel is rejected.

5. In view of the fact that defendants have not filed written statement, plaintiff is entitled to a decree under Order 8 Rule 10 of the Code of Civil Procedure. Accordingly, suit of the plaintiff is decreed under Order 8 Rule 10 of the Code of Civil Procedure in terms of prayer clauses (a) and (b).

(D.G. KARNIK, J)